

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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WENDELL F. FAIRMAN,

Plaintiff,

v.

CORRECTIONAL OFFICER PEAK,

Defendant,.

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ORDER

08-cv-115-bbc

On March 11, 2008 I allowed plaintiff to proceed on his Eighth Amendment claims against defendant Correctional Officer Peak. Now, plaintiff has written the court to ask that the \$1.41 initial partial filing fee he paid be refunded to him because, he says, prison officials had no authority to take it from his release account.

In another case filed in this court, Collins v. Green, 97-C-669-C ( W.D. Wis. Sept. 26, 1997), I addressed the question whether the Prison Litigation Reform Act precluded the use of release account funds to pay the initial partial payment required by 28 U.S.C. § 1915(a). I concluded it did not. Subsequently, the state of Wisconsin took the position that, under the supremacy clause, § 1915(a) supersedes any restrictions state law imposes on the availability of funds in a prisoner's release account. Therefore, there is no basis for

finding that plaintiff is entitled to a refund of the \$1.41 initial partial payment he paid in this case.

ORDER

IT IS ORDERED that plaintiff's request for a refund of his initial partial payment is DENIED.

Entered this 18<sup>th</sup> day of March, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge